



# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

August 7, 2007

Honorable Nick Licata  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Licata:

I am transmitting the attached proposed Council Bill, relating to appeals to the Hearing Examiner regarding the disposition of animals deemed to be dangerous by the City. The proposed Bill revises Seattle Municipal Code Sections 9.25.036 and 9.25.037, which are currently inconsistent with a recent court ruling, and must be revised.

Section 9.25.035 of the Seattle Municipal Code authorizes the Director of Executive Administration to declare an animal as dangerous if, unprovoked, it kills or inflicts severe injury upon a human being or domestic animal. In 2006, the Washington State Court of Appeals ruled that a public agency bears the burden of proof by a preponderance of the evidence when a determination involving dangerous animals undergoes an administrative appeal. The ruling also gives animal owners the right to subpoena witnesses and records when making an appeal. The Department of Executive Administration's investigations pertaining to dangerous animals are thorough and careful, and have rarely been appealed to the Hearing Examiner. Therefore, we do not expect the ruling or proposed revisions to the Seattle Municipal Code to have a significant impact on the City's efforts to ensure that Seattle citizens are protected from dangerous animals.

Thank you for your consideration of this legislation. Should you have questions, please contact Don Jordan at 386-4826.

Sincerely,

GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

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ORDINANCE 122489

AN ORDINANCE relating to dangerous animals; revising the standard of review in appeals before the Hearing Examiner of decisions of the Director of Executive Administration; and amending Sections 9.25.036 and 9.25.037 of the Seattle Municipal Code.

WHEREAS, the Director of Executive Administration has authority under SMC Section 9.25.035 to investigate and determine that an animal is dangerous, and determine whether the dangerous animal is subject to humane disposal or removal from the owner to a secure animal shelter; and

WHEREAS, in 2006, the Washington Court of Appeals ruled that public agencies have the burden of proof by a preponderance of the evidence that such determinations are correct, and that the animal owner has the right to subpoena witnesses and documents when challenging such determinations in an administrative proceeding; and

WHEREAS, the Seattle Animal Code must be revised to comply with the Court of Appeals ruling; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

**Section 1.** Subsection C of Section 9.25.036 of the Seattle Municipal Code is hereby revised as follows:

\* \* \*

C. Standard of Review. Appeals shall be considered de novo. The ~~((owner))~~ City shall have the burden of proving by a preponderance of the evidence that the Director's decision was ~~((incorrect))~~ correct. In the case of an order ordering the humane disposal of exotic animals or livestock under SMC 9.25.030 A4, the owner shall have the burden of proving that a reasonable alternative disposition is available. In the case of a directive of humane disposal for dangerous

1 animals, the ((owner)) City shall have the burden of proving that the Director's decision not to  
2 allow the animal to be sent to a secure animal shelter was not arbitrary and capricious.

3 **Section 2.** Subsection A of Section 9.25.037 of the Seattle Municipal Code is hereby  
4 revised as follows:

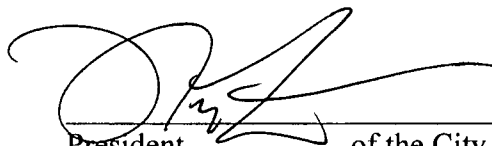
5 A. The Hearing Examiner shall conduct the review of an appeal in an expedited manner  
6 and shall make a decision thereon. The procedures of Sections 3.02.090 and 3.02.100 of this  
7 code shall apply, including but not limited to the ability to subpoena witnesses and documents as  
8 provided in HER 3.12, as amended, except that the intervals for action shall be compressed so  
9 that, unless both the owner and Director consent, the time elapsed between the date of the notice  
10 of appeal and the Hearing Examiner's determination shall not exceed thirty (30) days.  
11

12 \* \* \*



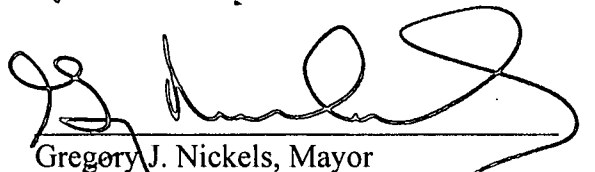
**Section 3.** This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 10<sup>th</sup> day of September 2007, and signed by me in open session in authentication of its passage this 10<sup>th</sup> day of September, 2007.



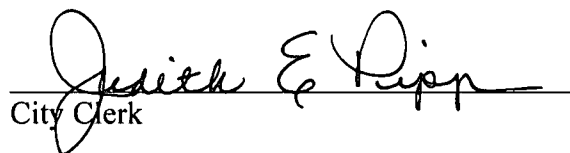
President \_\_\_\_\_ of the City Council

Approved by me this 21<sup>st</sup> day of September, 2007.



Gregory J. Nickels, Mayor

Filed by me this 21<sup>st</sup> day of September, 2007.



City Clerk

(Seal)

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Executive Administration	Don Jordan/6.4286	Ellen Schroer/3.9841

**Legislation Title:**

AN ORDINANCE relating to dangerous animals; revising the standard of review in appeals before the Hearing Examiner of decisions of the Director of Executive Administration; and amending Sections 9.25.036 and 9.25.037 of the Seattle Municipal Code.

• **Summary of the Legislation:**

The proposed legislation amends SMC Section 9.25.036 C to place the burden of proof on the City rather than the animal owner in appeals to the Hearing Examiner of decisions by the Director of Executive Administration related to the disposition of dangerous animals. The proposed legislation also amends SMC Section 9.25.037 to allow the owner of an animal deemed dangerous to subpoena witnesses and documents in connection with such an appeal.

• **Background:**

Pursuant to SMC Section 9.25.035, the Director of Executive Administration ("Director") is authorized to conduct an investigation and, if the findings of the investigation so indicate, declare an animal to be dangerous. An animal is deemed dangerous when, unprovoked, it inflicts severe injury on or kills a human being or domestic animal on public or private property. In the Director's order determining an animal to be dangerous, the Director will also direct the method of its disposition, either through humane disposal or by permanently placing the animal in a secure animal shelter at the owner's expense. Prior to issuing the final order, the Director is required to provide the animal owner with an opportunity to meet and provide oral or written information as to why the animal should not be declared dangerous. The owner is also entitled to request of the Director that the dangerous animal be sent to a secured animal shelter, at the owner's expense, rather than be subject to humane disposal, and the reasons supporting the request. SMC Section 9.25.036 provides for an appeal by the animal owner to the City Hearing Examiner of any Director's order determining an animal to be dangerous and determining the animal's disposition.

In 2006, the Washington Court of Appeals ruled in *Mansour v. King County* that a public agency has the burden of proof by a preponderance of the evidence that the agency's determination that an animal is dangerous, and the method of its disposition, are correct. The Court of Appeals also ruled that the animal owner has due process rights to subpoena witnesses and records in appealing the agency's determination.



The proposed legislation amends SMC Sections 9.25.036 and 9.25.037 to comply with the *Mansour* ruling. Hearing Examiner appeals of Director's determinations regarding dangerous animals are rare. The City conducts thorough and careful investigations in the case of animals deemed to be dangerous and, in most cases, the animal owners have not appealed the Director's determination. The Director does not expect the *Mansour* ruling and the proposed revisions to the Seattle Municipal Code to have a significant impact on the City's responsibility to ensure that Seattle citizens are protected from dangerous animals.

X **This legislation does not have any financial implications.**

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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215853  
CITY OF SEATTLE, CLERKS OFFICE

No.

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

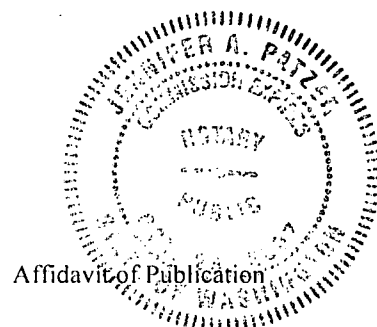
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

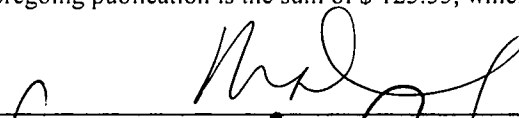
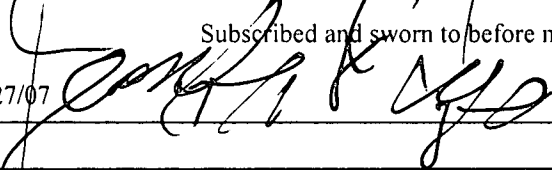
CT:122489 ORDINANCE

was published on

09/27/07

The amount of the fee charged for the foregoing publication is the sum of \$ 125.55, which amount has been paid in full.



  
Subscribed and sworn to before me on  
09/27/07   
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle

#### ORDINANCE 122489

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WHEREAS, in 2006, the Washington Court of Appeals ruled that public agencies have the burden of proof by a preponderance of the evidence that such determinations are correct, and that the animal owner has the right to subpoena witnesses and documents when challenging such determinations in an administrative proceeding; and

WHEREAS, the Seattle Animal Code must be revised to comply with the Court of Appeals ruling; NOW, THEREFORE,

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Section 1. Subsection C of Section 9.25.036 of the Seattle Municipal Code is hereby revised as follows:

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C. Standard of Review. Appeals shall be considered de novo. The ~~((owner))~~ City shall have the burden of proving by a preponderance of the evidence that the Director's decision was ~~((incorrect))~~ correct. In the case of an order ordering the humane disposal of exotic animals or livestock under SMC 9.25.030 A4, the owner shall have the burden of proving that a reasonable alternative disposition is available. In the case of a directive of humane disposal for dangerous animals, the ~~((owner))~~ City shall have the burden of proving that the Director's decision not to allow the animal to be sent to a secure animal shelter was not arbitrary and capricious.

Section 2. Subsection A of Section 9.25.037 of the Seattle Municipal Code is hereby revised as follows:

A. The Hearing Examiner shall conduct the review of an appeal in an expedited manner and shall make a decision thereon. The procedures of Sections 3.02.090 and 3.02.100 of this code shall apply, ~~including but not limited to the ability to subpoena witnesses and documents as provided in HER 3.12, as amended~~, except that the intervals for action shall be compressed so that, unless both the owner and Director consent, the time elapsed between the date of the notice of appeal and the Hearing Examiner's determination shall not exceed thirty (30) days.

\*\*\*

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 10th day of September, 2007, and signed by me in open session in authentication of its passage this 10th day of September, 2007.

Nick Licata

President of the City Council

Approved by me this 21st day of September, 2007.

Gregory J. Nickels, Mayor

Filed by me this 21st day of September, 2007.

(Seal) Judith Pippin

City Clerk

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, September 27, 2007.

9/27(215853)